FGO

DSC – TERMS AND CONDITIONS AND UNC – APPROACH ON CONFIDENTIALITY

1   Introduction

1.1   This paper is supplemental to the "DSC – Data flows and rights of use" paper dated 26 May 2016.

1.2   Confidentiality is addressed at Clause 9 of the DSC Terms and Conditions and in TPD Section V5 of the UNC.

1.3   The provisions in the DSC Terms and Conditions are based on those in the ASA at Clause 17, which have been updated to reflect FGO and to clarify certain aspects.

1.4   The purpose of this paper is to confirm the drafting approach to confidentiality under the DSC Terms and Conditions and the UNC.

2   Approach in DSC

2.1   The latest version of the DSC Terms and Conditions (Version 2.0) is on the JO website (see Supporting Business Documentation on the Modification 0565 page).

2.2   Clause 9.1 requires each party (whether the CDSP or a Customer) (the **Receiving Party**) to keep confidential all information received from any other party (the **Disclosing Party**).

2.3   Clause 9.2 regulates how a Receiving Party may use such information. A Receiving Party must not use or disclose such information except:

        (a)   with the Disclosing Party's prior written consent; or

        (b)   for the purposes, and to the persons, set out in Clause 9.2.

2.4   Clause 9.2 also sets out the information that is not governed by the confidentiality provisions, such as information that is already public knowledge.

2.5   Clause 9.3 requires persons to whom disclosure is permitted to be made aware of the confidential nature of the information disclosed and to agree to keep it confidential.

2.6   Clause 9.4 states that the obligations of confidentiality shall survive termination or expiry of the DSC.

2.7   Clause 9.5 sets out the circumstances in which the confidentiality provisions will not apply to certain types of data, namely Services Data and Contract Data as defined in the DSC Terms and Conditions.

2.8   Clause 9.6 specifies that, as between Customers, the confidentiality provisions of the UNC apply (on the basis that the UNC regulates the relationship between Customers).

3   Approach in UNC

3.1   Confidentiality is addressed in TPD Section V5 of the UNC. The proposed changes are shown in the document entitled 'TPD Section V' published on the JO website (see materials published for the 0565 work group meeting on 25 July 2016). No substantive changes are proposed to the UNC drafting.

3.2   However, to ensure consistency between the DSC and the UNC a number of small changes are required, as follows:

   (a)   to make clear that the DSC includes confidentiality terms, and that it is these terms (and not the UNC terms) that govern confidentiality obligations between Code parties and the CDSP;

   (b)   under the UNC confidentiality obligations are framed in terms of the non-disclosure of 'Protected Information' (as such term is defined); it is therefore confirmed that where a Code party receives information from the CDSP this does not stop the information constituting Protected Information (in respect of which the receiving party will continue to have UNC obligations);

   (c)   to confirm information which belongs to the CDSP is not Protected Information.

3.3   In addition it is made clear that Code parties obligations on non-disclosure shall not apply:

   (a)   to disclosure of Protected Information by the CDSP in the performance of a Direct or Agency Function;

   (b)   where disclosure of Protected Information is permitted under the DSC; or

   (c)   if disclosure to the CDSP of Protected Information is required or permitted under the UNC.

3.4   It is also confirmed if a Code party complies with the data security requirements under the DSC any unauthorised access by a third party will not amount to a breach of UNC confidentiality obligations.

4   Actions

4.1   Workgroup to provide comments (if any) on drafting for the DSC and the UNC.